

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

MICHAEL J GASS

Claimant

and

**IOWA CORRECTIONAL INSTITUTE FOR
WOMEN**

Employer

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HEARING NUMBER: 22B-UI-00397

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Michael Gass, was employed by the Iowa Correctional Institute from April 18, 1997 through September 23, 2021 as a full-time correctional officer. The Employer has a policy regarding trips involving officers transporting incarcerated individuals, which provides that the incarcerated individuals may not be left unattended or out of sight; that vehicles shall stop to use restroom facilities only at law enforcement centers or correctional facilities; and officers shall notify the shift supervisor prior to stopping. The policy also provides that prior to making an unscheduled stop, the officer must receive approval from the shift supervisor. Claimant was aware of the policy.

Prior to March of 2021, the Employer had designated correctional officer transporters of offenders for trips to Iowa City. However, this designated group was disbanded, and the responsibility was spread randomly among all correctional officers. The Claimant had difficulty traveling long distances without taking a bathroom break. On several occasions that the Claimant had to transport to Iowa City, he had three close calls having to use the restroom along the way. He discussed his concerns with the Employer, as well as took measures (reduced fluid consumption, restroom use prior to trip) to minimize his need to have to take a restroom break during these trips.

While transporting two offenders to the University of Iowa Hospital and Clinics on August 26, 2021, the Claimant felt the need to use the restroom even though he had already used the restroom prior to leaving on the return trip. He contacted the shift supervisor to ask what he should do. The supervisor directed him to the nearest law enforcement center, which was 25-30 miles away; or, if an emergency, he could use the nearest rest area. About five minutes after the call to his supervisor, the Claimant felt mounting pressure, and needed to relieve himself. He noted that the offenders were asleep, and he pulled off the road where he could still see the vehicle, and relieved himself to avoid creating any medical problems had he waited for another half hour.

As soon as the Claimant returned to the correctional facility, he informed his supervisor about his actions, which led to an investigation. Based on that investigation, the Employer determined Claimant's actions created risk to the safety of his coworker, the incarcerated individuals, and the public. The Employer terminated the Claimant on September 23, 2021, for violating its policies on conduct and escorting incarcerated individuals.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2021) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(a):

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests

or of the employee's duties and obligations to the employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The Claimant is a long-term employee whose last disciplinary action occurred over a year prior to his termination, and did not factor into his termination. As to this final incident, there is no dispute that the Claimant violated the Employer's policy regarding transporting offenders when he made the unscheduled stop to relieve himself outside the acceptable options provided by the Employer. He tried to comply by contacting the shift supervisor to locate the nearest law enforcement center, however, that option (including the emergency option) was too far for him to wait. "In order to be disqualified from benefits for a single incident of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has a right to expect of employees." Diggs v. Employment Appeal Board, 478 N.W.2d 432, 434 Iowa App. 1991) (citing Henry, 391 N.W.2d at 736). Further, "[w]illfull misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." Pierce v. Iowa Department of Job Service, 425 N.W.2d 679, 680 (Iowa 1988) (citing Myers, 373 N.W.2d 507, 510(Iowa App. 1985)). "However, an employee's failure to perform a specific task may *not* constitute misconduct if such failure is in good faith or for good cause." Id. (citing Woods v. Iowa Dept. of Job Service, 327 N.W.2d 768, 771 (Iowa App. 1982)).

In the instant case, the Claimant knew he had trouble traveling long distances without taking a restroom break, based on his prior 'near calls'. He made his concerns known to the Employer, and took it upon himself to mitigate 'nature's call' by drinking very little, and using the restroom both before and after his transport trips. His efforts did not always alleviate his problem based on the August 26th incident. We find his reasoning was not wholly unreasonable given the options he faced, i.e, creating a medical issue for himself and/or producing what may be considered hazardous material on board the Employer's vehicle. While he was physically unable to comply with the shift supervisor's directive, we find he acted in good faith under the circumstances. The fact that he immediately reported his action to the Employer, i.e., that he pulled off the road while still in view of his vehicle, and yet away from view of his offenders, is indicative that he was cognizant of the Employer's interests as he tried to minimize the emergency situation. In viewing this record as a whole, we find the Claimant's behavior was an isolated incident that didn't rise to the legal definition of misconduct under the circumstances.

DECISION:

The administrative law judge's decision dated February 16, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

James M. Strohman

Myron R. Linn

AMG/fnv